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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,586	11/16/2001	Jason F. Hunzinger	440402000300	8265
25224	7590	07/01/2005		
MORRISON & FOERSTER, LLP 555 WEST FIFTH STREET SUITE 3500 LOS ANGELES, CA 90013-1024			EXAMINER PEACHES, RANDY	
			ART UNIT	PAPER NUMBER
			2686	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/992,586

Applicant(s)

HUNZINGER, JASON F.

Examiner

Randy Peaches

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/18/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. ***Claims 1-49*** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over ***claims 1-30*** of U.S. Patent No. 6,512,927. Although the conflicting claims are not identical, they are not patentably distinct from each other because a method is claimed rescuing potentially failing connections in a network.

Regarding ***claim 1*** and dependent ***claims 2-26***; the claims have similar and/or exact limitations as the claims 1-30 (e.g. 2-30). See Application No. 10/008,232.

Regarding ***claim 28***, and dependent ***claims 29-38***; the claims have similar and/or exact limitations as the claims 1-30 (e.g. 2-30). See Application No. 10/008,232.

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Regarding **claim 40**, and dependent **claims 41-49**; the claims have similar and/or exact limitations as the claims 1-30 (e.g. 2-30). See Application No. 10/008,232.

Regarding **claim 27**, the claims have similar and/or exact limitations as the claim 1. See Application No. 10/008,232.

Regarding **claim 39**, the claims have similar and/or exact limitations as the claim 1. See Application No. 10/008,232.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-49** are rejected under 35 U.S.C. 102(e) as being anticipated by Rappaport et al. (U.S. Patent Number 6,477,373 B1)(hereinafter referenced as Rappaport).

Regarding **claims 1, 27, 28, 39, and 40**, Rappaport discloses a system and method comprising a network and one or more mobile stations (MSs) for enabling

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communications with the one or more MSs and for rescuing at least one MS having a connection with the network that has become a potentially failing connection, a method for limiting rescue attempts of the potentially failing connection, comprising (see column 8 lines 34-60):

- identifying the potentially failing connection; determining current rescue limitations for the potentially failing connection. See column 8 lines 47-52;
- allowing an attempted rescue of the potentially failing connection if rescue is permitted based on the current rescue limitations. See column 8 lines 52-60; and
- preventing the attempted rescue of the potentially failing connection if rescue is prohibited based on the current rescue limitations. Rappaport teaches wherein only if the number of attempts have been exceed. See column 8 lines 53-60.

Regarding **claims 2, 29**, according to **claims 1, 28**, Rappaport further discloses in column 8 lines 33-60 wherein the determination of current rescue limitations including consideration of preexisting rescue limitations determined prior to a start of the potentially failing connection or rescue parameters determined at a time of the potentially failing connection.

Regarding **claim 3**, according to **claim 1**, Rappaport further discloses the determination of current rescue limitations including determining that rescue attempts of the potentially failing connection will be limited to a predetermined number per connection. See column 8 lines 52-60.

Regarding **claim 4**, according to **claim 1**, Rappaport further discloses the determination of current rescue limitations including determining that a rescue attempt of the potentially failing connection will be allowed only if a predetermined amount of time has elapsed since the last rescue of the connection. See column 8 lines 52-60.

Regarding **claims 5 and 7-10**, according to **claim 1**, Rappaport further discloses the determination of current rescue limitations including determining that a rescue attempt of the potentially failing connection will be allowed only if less than a predetermined number of rescues of the connection have occurred within a predetermined amount of time. See column 8 lines 33-60 and column 9 lines 14-59.

Regarding **claims 6, 31, 43**, according to **claims 1, 28, 40**, Rappaport further discloses the determination of current rescue limitations including determining that a rescue attempt of the potentially failing connection will be prevented if the connection had been previously characterized as a poor connection, based on the number of attempts. See column 21 lines 35-67 and column 22 lines 1-22.

Regarding **claims 11, 32, 44**, according to **claims 1, 28, 40**, Rappaport further discloses the determination of current rescue limitations including determining current rescue limitations specific to a type of the potentially failing connection. See column 6 lines 45-63.

Regarding **claims 12, 45**, according to **claims 1, 40**, Rappaport further discloses the determination of current rescue limitations including determining current rescue limitations specific to a cause of the potentially failing connection. See column 6 lines 45-63.

Regarding **claims 13, 46**, according to **claims 1, 40**, Rappaport further discloses the determination of current rescue limitations including determining current rescue limitations specific to a context of the potentially failing connection. See column 6 lines 45-63.

Regarding **claim 14**, according to **claim 1**, Rappaport further discloses the determination of current rescue limitations including adaptively determining current rescue limitations based on time period. See column 8 lines 47-60.

Regarding **claim 15**, according to **claim 1**, Rappaport further discloses the determination of current rescue limitations including adaptively determining current rescue limitations based on a similarity of conditions experienced by the MS having the potentially failing connection to conditions previously experienced by that MS or other MSs, and historical rescue success rates of the MS having the potentially failing connection or the other MSs. See column 10 lines 53-66.

Regarding **claim 16**, according to **claim 1**, Rappaport further discloses the determination of current rescue limitations including determining that a rescue attempt of the potentially failing connection will be allowed only if previous rescues of the connection were completed within a predetermined amount of time. See column 10 lines 53-66.

Regarding **claim 17**, according to **claim 1**, Rappaport further discloses the determination of current rescue limitations including determining that a rescue attempt of the MS having the potentially failing connection will be prevented if a percentage of time previously spent by that MS in a muted condition is greater than a predetermined threshold percentage. See column 10 lines 64-66.

Regarding **claims 18 and 38**, according to **claims 1 and 28**, Rappaport further discloses including determining the current rescue limitations in accordance with commands input to the MS by a user. See column 10 lines 64-66.

Regarding **claim 19**, according to **claim 2**, Rappaport further discloses wherein the identification of the potentially failing connection and the determination of the current rescue limitations are performed by the network, the method further comprising communicating the preexisting rescue limitations from the network to the MS having the potentially failing connection in a rescue order; wherein the allowing or preventing of the



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attempted rescue is determined by the MS in accordance with the rescue order. See column 8 lines 47-60.

Regarding **claims 20, 35, 47**, according to **claims 19, 29, 41**, Rappaport further discloses the rescue order comprising a specific rescue order, and wherein the allowing or preventing of the attempted rescue is dictated to the MS by the specific rescue order. See column 8 lines 58-60.

Regarding **claims 21, 36 and 48**, according to **claims 19, 29 and 41**, Rappaport further discloses the rescue order comprising a rescue control order containing control information, and wherein the allowing or preventing of the attempted rescue is determined by the MS in accordance with the control information contained in the rescue order. See column 10 lines 64-67 and column 7 lines 1-14.

Regarding **claims 22, 26, 33, 34, 37 and 49**, according to **claims 21, 25, 28, 36 and 48**, Rappaport further discloses the control information including information specific to a type, cause, or context of the potentially failing connection. See column 10 lines 64-66.

Regarding **claims 23 and 25**, according to **claims 2 and 23**, Rappaport further discloses wherein the identification of the potentially failing connection and the determination of the current rescue limitations are performed by the MS having the

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potentially failing connection, the method further comprising communicating the preexisting rescue limitations from the MS having the potentially failing connection to the network in a rescue order; wherein the allowing or preventing of the attempted rescue is determined by the network in accordance with the rescue order. See column 7 lines 9-14.

Regarding **claim 24**, according to **claim 23**, Rappaport further discloses wherein the rescue order comprising a specific rescue order, and wherein the allowing or preventing of the attempted rescue is dictated to the network by the specific rescue order. See column 7 lines 9-14.

Regarding **claims 30, 42**, according to **claims 29, 41**, Rappaport further discloses the determination of the current rescue limitations including consideration of the preexisting rescue limitations or rescue parameters determined at a time of the potentially failing connection. See column 8 lines 52-60.

Regarding **claim 41**, according to **claim 40**, Rappaport further discloses further including: at the network, receiving preexisting rescue limitations from the MS having the connection in a rescue order prior to a start of the potentially failing connection (See column 8 lines 52-60), and determining the current rescue limitations for the potentially failing connection in accordance with the preexisting rescue limitations. See column 8

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lines 33-60.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy Peaches whose telephone number is (571) 272-7914. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha D. Banks-Harold can be reached on (571) 272-7905. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 27, 2005  
Randy Peaches

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